

REMARKS/ARGUMENTS

In the Office Action, the Examiner required an election of species. The Examiner is requested to reconsider the identification of the species among which election is required, for the following reasons and having regard to the amended form of the claims.

As is described in the specification, Figure 3 shows the nucleotide sequence and deduced amino acid sequence for the 200 kDa outer membrane protein for *M. catarrhalis* strain 4223. SEQ ID NO: 5 identifies the complete nucleotide sequence, SEQ ID NO: 6 identifies the coding portion of the complete sequence and SEQ ID NO: 7 identifies the deduced amino acid sequence.

Similarly, Figure 4 shows the nucleotide sequence and deduced amino acid sequence for the 200 kDa outer membrane protein for *M. catarrhalis* strain Q8. SEQ ID NO: 8 identifies the coding sequence and SEQ ID NO: 9 identifies the deduced amino acid sequence.

Further, Figure 5 shows the nucleotide sequence and deduced amino acid sequence for the 200 kDa outer membrane protein for *M. catarrhalis* strain LES-I. SEQ ID NO: 10 identifies the coding sequence and SEQ ID NO: 11 identifies the deduced amino acid sequence.

Figure 8 shows the nucleotide sequence (SEQ ID NO: 12) and deduced amino acid sequence of the 5'-truncated gene encoding the M56 200 kDa truncated protein of *M. catarrhalis* strain 4223.

Regrettably, the claims do not correctly reflect this SEQ ID identification. This Amendment seeks to correct these errors. In this regard, it is clarified that claim 1(a) refers to SEQ ID NOS: 5, 6, 8 and 10, as per Figures 3, 4 and 5 and that claim 1(b) refers to SEQ ID NOS: 7, 9 and 11, as per Figures 3, 4 and 5.

Having regard to the above, it would appear that the Examiner is requiring restriction among SEQ ID NOS: 5, 6, 8, 10 and 12. However, SEQ ID NOS: 5 and 6 surely cannot be considered to be separate inventions nor an invention separate from the nucleic acid molecule which encodes SEQ ID NO: 7.

Similar comments apply to the nucleic acid molecule which encode SEQ ID NO: 9 and SEQ ID NO:11.


In view of the requirement to elect a species, applicants hereby elect the species of SEQ ID NO: 6, to which claim 1 is generic.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned **"Version with markings to show changes made."**

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

SIM & McBURNEY

BY: 

M.I. Stewart
Reg. No. 24,973

Toronto, Ontario, Canada,
(416) 595-1155
FAX No. (416) 595-1163



Appl. No. 09/504,619

RECEIVED

MAY 30 2001

TECH CENTER 1600/2900

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claim 1 has been amended as follows:

1. (Amended) An isolated and purified nucleic acid molecule having a nucleotide sequence selected from the group consisting of:

- (a) a nucleotide sequence set forth in Figure 3, 4 or 5 (SEQ ID Nos: 5, 6, 8, 10 [9, 11, 12]) for *Moraxella catarrhalis* strains 4223, Q8 and LES-1 respectively or the complementary sequence thereto,
- (b) a nucleotide sequence encoding an about 200 kDa outer membrane protein of a strain of *Moraxella catarrhalis* and having the derived amino acid sequence shown in Figures 3, 4 or 5 (SEQ ID Nos: 7, 9, 11 [10, 13]) for *Moraxella catarrhalis* strains 4223, Q8 and LES-1 respectively, and
- (c) a nucleotide sequence encoding an about 200 kDa outer membrane protein of another strain of *Moraxella catarrhalis* which is characterized by a tract of consecutive G nucleotides which is 3 or a multiple thereof in length, an ATG start codon about 80 to 90 bp upstream of said tract and said tract being located between about amino acids 25 and 35 encoded by the nucleotide sequence.